

# OPEN MEETING ITEM



**COMMISSIONERS**  
MARC SPITZER - Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES

**ORIGINAL**



**ARIZONA CORPORATION COMMISSION**

**RECEIVED**

2003 NOV -71 A 10: 25

AZ CORP COMMISSION  
DOCUMENT CONTROL

DATE: November 7, 2003

DOCKET NO: RR-03639A-03-0667

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

**UNION PACIFIC RAILROAD COMPANY  
(AT-GRADE CROSSING)**

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

NOVEMBER 17, 2003

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

DECEMBER 2 AND 3, 2003

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

Arizona Corporation Commission

**DOCKETED**

NOV 07 2003

DOCKETED BY	
-------------	--

**BRIAN C. McNEIL**  
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 MARC SPITZER, Chairman  
4 WILLIAM A. MUNDELL  
5 JEFF HATCH-MILLER  
6 MIKE GLEASON  
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF  
9 THE ARIZONA DEPARTMENT OF  
10 TRANSPORTATION TO UPGRADE A  
11 CROSSING OF THE UNION PACIFIC  
12 RAILROAD COMPANY AT BUCHANAN  
13 STREET, IN THE CITY OF PHOENIX, ARIZONA,  
14 MARICOPA COUNTY, ARIZONA, M.P. 907.02.

DOCKET NO. RR-03639A-03-0667

DECISION NO. \_\_\_\_\_

**OPINION AND ORDER**

10 DATE OF HEARING: October 23, 2003

11 PLACE OF HEARING: Phoenix, Arizona

12 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

13 APPEARANCES: Mr. Gary H. Horton, Staff Attorney, Legal Division, on  
14 behalf of the Utilities Division of the Arizona  
Corporation Commission.

15 **BY THE COMMISSION:**

16 On September 11, 2003, the Arizona Department of Transportation ("ADOT") submitted to  
17 the Arizona Corporation Commission ("Commission") a request for an Opinion and Order for the  
18 approval of an agreement between ADOT and the Union Pacific Railroad Company ("Railroad") to  
19 upgrade the Railroad's crossing at Buchanan Street in the City of Phoenix, Arizona, at milepost  
20 907.02 ("Application").

21 On September 24, 2003, by Procedural Order, the Application was set for a hearing and  
22 ADOT was ordered to notify any interested party of the Application and the hearing.

23 On October 21, 2003, ADOT certified that notice had been provided pursuant to the terms of  
24 the Procedural Order.

25 On October 23, 2003, a full public hearing was held before a duly authorized Administrative  
26 Law Judge of the Commission at its offices in Phoenix, Arizona. At the conclusion of the hearing,  
27 the matter was taken under advisement pending submission of a recommended Opinion and Order to  
28 the Commission.

\* \* \* \* \*

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

**FINDINGS OF FACT**

1. On September 11, 2003, ADOT filed an Application in which it requested an Opinion and Order from the Commission approving an agreement between ADOT and the Railroad for the upgrade of a crossing to replace the crossing surface and to install automatic warning devices at Buchanan Street, in the City of Phoenix, Arizona, at milepost 907.02.

2. On October 21, 2003, ADOT provided notice by registered U.S. mail of the Application and hearing thereon.

3. A hearing was held as scheduled on October 23, 2003.

4. The Application provides for the Railroad to install three new concrete crossing surfaces and to upgrade the crossing which has automatic flashing light signals by adding automatic gates.

5. Staff testified that the cost apportionment for the installation of the crossing upgrade as provided in the Application was proper.

6. Staff has recommended that the Application be approved.

**CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the parties and over the subject matter of the Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and 40-337.01.

2. Notice of the Application was provided in accordance with the law.

3. Installation of the crossing upgrade is necessary for the public's convenience and safety.

4. The Application should be approved as recommended by Staff.

5. After installation of the crossing, the Railroad should maintain the crossing in accordance with A.A.C. R14-5-104.

...

**ORDER**

IT IS THEREFORE ORDERED that the Arizona Department of Transportation's Application is hereby approved.

IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall complete the crossing upgrade as described in the Application within fifteen months from the effective date of this Decision.

IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall notify the Commission, in writing, within ten days of both the commencement and the completion of the crossing upgrade, pursuant to A.A.C. R14-5-104.

IT IS FURTHER ORDERED that upon completion of the crossing upgrade, the Union Pacific Railroad Company shall maintain the crossing in compliance with the A.A.C. R14-5-104.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN COMMISSIONER COMMISSIONER

COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_ day of \_\_\_\_\_, 2003.

BRIAN C. McNEIL  
EXECUTIVE SECRETARY

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

MES:mlj

1 SERVICE LIST FOR: UNION PACIFIC RAILROAD COMPANY  
2 DOCKET NO. RR-03639A-03-0667  
3  
4 John Syers  
5 ADOT-Utility & Railroad  
6 205 S. 17<sup>th</sup> Avenue  
7 Phoenix, Arizona 85007-3213  
8  
9 David Gibson  
10 ADOT - Traffic Records Section  
11 206 S. 17th Avenue, MD-064R  
12 Phoenix, AZ 85007  
13  
14 Freddy Chung  
15 UNION PACIFIC RAILROAD COMPANY  
16 19100 Slover Avenue  
17 Bloomington, CA 92316  
18  
19 Christopher Kempley, Chief Counsel  
20 Legal Division  
21 ARIZONA CORPORATION COMMISSION  
22 1200 West Washington Street  
23 Phoenix, Arizona 85007  
24  
25 Don Thompson  
26 Railroad Safety Section  
27 ARIZONA CORPORATION COMMISSION  
28 1200 West Washington Street  
Phoenix, Arizona 85007